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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**PLAINTIFFS' RESPONSE TO
APPELLANT FORTMAN'S
CERTIFICATION OF NOT ORDERING
TRANSCRIPTS**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor

Jonathan Fortman, who has appealed the Court's approval of the Class Settlement, has filed a Certification of Not Ordering Transcripts (Dkt. 1210). He asserts that the transcripts Plaintiffs have designated under Ninth Circuit Rule 10.3-1(b) are "extraneous" and that he should not be required to pay for them. Fortman asks the Court to intervene under Ninth Circuit R. 10.3-1(f), which governs disputes about payment for transcripts.

However, under the rules, an appellant like Fortman must only order necessary transcripts that are "not already on file" in the district court. Fed. R. App. P. 10(b)(1)(A). If a party has already ordered a transcript, then the court reporter has already prepared and filed the transcript, and it is "already on file" under Rule 10(b)(1)(A).

Here, the three transcripts listed in Plaintiffs' Notice of Additional Transcripts, and that Fortman seeks to put at issue, have all been ordered and e-filed already, as this action's ECF docket makes clear. (Dkts. 1060, 1126, 1176.) Fortman, therefore, need not pay for their transcription. As a result, there is no dispute about who should pay for their transcription, and the Court's intervention is unnecessary. As Fortman notes, the three transcripts were listed on Plaintiffs' Notice of Additional Transcripts, *see* Ninth Circuit R. 10-3.1(b), but the purpose of the Notice was simply to give Fortman fair notice that Plaintiffs anticipate relying on certain transcripts. The Notice certainly did not ask Fortman to pay for the transcripts.

If Plaintiffs should prevail on appeal and seek to recover the costs of these transcripts from Fortman, then the Court may need to decide whether they were necessary. *See* Fed. R. App. P. 39(e)(2) (cost of transcripts taxed in district court). Until then, however, Plaintiffs respectfully submit that there is no dispute requiring Court intervention.

Dated: January 26, 2024

Respectfully submitted,

KELLER ROHRBACK L.L.P.

BLEICHMAR FONTI & AULD LLP

By: /s/ Derek W. Loeser
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By: /s/ Lesley E. Weaver
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Derek W. Loeser, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of January, 2024, at Seattle, Washington.

/s/ Derek W. Loeser

Derek W. Loeser

CERTIFICATE OF SERVICE

I, Sarah Skaggs, hereby certify that on January 26, 2024, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Sarah Skaggs

Sarah Skaggs